

Presented by Siew Kum Hong (Nominated Member)

PETITION

To the Honourable Members of Parliament, Singapore, in meeting assembled.

The humble Petition of Mr George Bonaventure Hwang Chor Chee; Dr Stuart Koe Chi Yeow; Ms Tan Joo Hymn and others of like opinion.

SHOWETH THAT:

The Penal Code (Amendment) Bill (No. 38 of 2007) (“the Amendment Bill”) will amend Section 377 of the Penal Code, with the result that anal and oral sex between heterosexual male-female couples will be legalized. The result is that the continued existence of Section 377A will prejudice the rights and interests of homosexual and bisexual men, in an unconstitutional manner.

Section 377A is aimed at sex between men, and covers private consensual anal and oral sex between men as well. If and when the Amendment Bill is enacted, there will be no corresponding prohibitions against private consensual anal and oral sex between heterosexual couples. This directly discriminates against homosexual and bisexual men: an act performed by a heterosexual couple is permitted, while the same act performed by a homosexual or bisexual male couple is criminalized. Such discrimination infringes the right of homosexual and bisexual men to equal treatment by and protection before the law, as set out in Article 12(1) of the Constitution of the Republic of Singapore.

Article 12(1) provides “All persons are equal before the law and entitled to the equal protection of the law.” The reason cited by the Government for retaining Section 377A does not pass the requirements for a permissible deviation from Article 12(1).

In the course of public discussions surrounding the Amendment Bill, the Government’s stated rationale for not repealing Section 377A is that Singapore is a conservative society, that the majority of Singaporeans have a negative attitude towards homosexuality, and that retaining Section 377A is necessary to reflect this.

Even if it is true that Singapore is a conservative society and the majority of Singaporeans view homosexuality negatively, the “tyranny of the majority” is precisely what Article 12(1) seeks to protect Singaporeans against. In our view, this stated rationale fails the “rational nexus” test for determining the constitutionality of a deviation from Article 12(1).

Under Singapore law, a departure from Article 12(1) is permitted if and only if it is rationally connected to a legitimate purpose of the statute in question.

According to the Public Consultation Paper on the Proposed Penal Code Amendments issued by the Ministry of Home Affairs dated 8 November 2006, the Penal Code is intended to maintain “a safe and secure society in today's context”. The Amendment Bill is intended to “bring the Penal Code up-to-date, and make it more effective” in achieving its objective of ensuring safety and security.

The effect of Section 377A is to criminalize certain consensual sexual acts between adults in their own homes. But private sexual conducts of consenting adults do not make Singapore unsafe or less secure.

Furthermore, reflecting the public's conservative attitude towards sex is not one of the stated aims of the Penal Code, or even the Amendment Bill. Yet, the stated objective of Section 377A is to reflect public morality.

Section 377A is therefore not rationally connected with the legitimate aim of the Penal Code.

In any event, we believe that there is no legitimate aim for which Section 377A can be rationally connected with. No harm is done to society when consenting adults have sex in private. Why should it be any different if it is between two men?

The correct basis for regulating the sexual conduct in private between adults should be consent. Indeed, the raft of provisions on sexual conduct introduced by the Amendment Bill make it clear that consent (or the lack thereof) is the touchstone for determining whether sexual conduct between adults should be unlawful.

And yet, Section 377A criminalizes consensual acts between adults. It is therefore an unconstitutional derogation from the guarantee of equality and equal protection encapsulated in Article 12(1) of the Constitution.

Furthermore, if and when the Amendment Bill is enacted, the Penal Code will appear to selectively reflect public morality. It is undisputed that society finds extra-marital sex to be immoral. Yet, the Penal Code does not criminalize such activities.

Indeed, the Amendment Bill even seeks to repeal Section 498 of the Penal Code, which makes it an offence to entice, take away or detain a married woman with the intention of having illicit intercourse with her. The Ministry's explanation is that Section 498 is an archaic offence which is no longer relevant in today's context. But public morality in today's society remains firmly opposed to and disapproving of extra-marital sex.

Throughout history, public morality as a justification for discriminatory action has never stood up over time. In times past and in other countries, public morality has been cited as the basis for legislation to enforce slavery; discrimination against racial and religious minorities; and discrimination against women, including not permitting them to work or to vote.

None of these forms of institutionalized discrimination remain today. Indeed, they are universally recognized as being inconsistent with modern norms, and even abhorrent to today's public morality.

Article 12(1) of the Constitution states the principle simply, but elegantly, "All persons are equal before the law and entitled to the equal protection of the law." We are respectfully requesting that Parliament uphold this fundamental principle, and extend equal protection to all Singaporeans in respect of their private consensual sexual conduct, regardless of their sexual orientation.

By this Petition, the Undersigned pray that Section 377A of the Penal Code (Cap. 224) be repealed.

Dated this 6 day of Oct. 2007

Name: George Bonaventure Hwang Chor Chee

Name: Stuart Koe Chi Yeow

Name: Tan Joo Hymn

No. of signatories: 2,341